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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL MARTINEZ,

Defendant and Appellant.

B287722

Los Angeles County
Super. Ct. No. NA107097

APPEAL from a judgment of the Superior Court of
Los Angeles County, Gary J. Ferrari, Judge. Affirmed.

Jeffrey J. Douglas, under appointment by the Court
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Zee Rodriguez and Stephanie C. Santoro,
Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Paul Martinez of robbery. On appeal, Martinez contends the evidence was insufficient to prove the force or fear required for an *Estes* robbery.¹ We disagree and affirm Martinez’s conviction.

FACTS AND PROCEDURAL BACKGROUND

On July 25, 2017, around 2:00 p.m., Martinez came into a Coffee Bean & Tea Leaf shop in Long Beach. Martinez stuck his hands into the tip jars on the counter and took out cash. Coffee shop employee Skie Carranza saw Martinez take the money. Carranza went to the door of the shop that opened onto a patio and blocked it. Carranza asked Martinez, “You seriously just going to try to leave? You’re just going to go? You’re going to take the money and go?” Martinez responded, “Who’s going to stop me?”

Martinez tried to “barg[e] through” Carranza at least twice. Carranza “just bodied him back.” There was physical contact between Martinez’s chest and Carranza’s. Carranza told Martinez, “I can’t let you leave. You stole from my tip jar.” Something poked Carranza in his left arm and Martinez pushed Carranza back. The sharp object felt “like keys or [a] pointed pencil.” Carranza didn’t see what it was. The object broke Carranza’s skin; he was bleeding. Martinez was “loud,” “screaming.” He was “pushing to get out the door.”

Carranza told his co-worker to get the manager, who was in the back of the shop. The manager, Lapetria McMoore, came out and asked what was going on. Carranza told McMoore that Martinez had stolen from the tip jars. McMoore asked Martinez if he had taken the tip money and he said yes.

¹ *People v. Estes* (1983) 147 Cal.App.3d 23.

Martinez “[s]tarted to basically challenge everybody, almost like he was challenging people to fight him or to step up to him and he just kind of walked out.” “Everybody just kind of let him go.” Martinez went around Carranza, who was still in the doorway. Martinez then left, taking the money with him. Carranza stepped to the side because no one helped him block the exit.

Customer John Pearson followed Martinez out of the coffee shop. Pearson saw Martinez get into a pickup truck. Pearson took pictures of the truck as Martinez drove away.

Coffee shop employee Lyndsey Centeno and customer Lluvia Zuniga later said Martinez had had a knife in his hand.

Carranza had grabbed Martinez’s cell phone from the countertop. Martinez told Carranza, “You can have the phone.” Martinez left two cell phones behind when he left the coffee shop. A day or two later, Martinez returned, asking for his phones. McMoore told him “he needed to get his phones from the police.”

Surveillance video from two camera angles recorded the incident. We have watched the video. Martinez can be seen entering the coffee shop, approaching the counter, and reaching into both of the tip jars to take out cash. Carranza is several feet away from the tip jars, doing something behind the counter. He appears to see what Martinez is doing and returns to the tip jar and register area. Martinez had laid his cell phone on the counter while he was taking the money and Carranza picks it up. Martinez gathers up the dollar bills and turns toward the door.

Carranza comes around from behind the counter and stands in the doorway. Carranza holds his hands out to the sides as if he is trying to reason with Martinez. Martinez appears to be arguing with Carranza, holding one arm out and then the other, pointing in opposite directions. Martinez is close to Carranza’s face. Martinez then hits the glass next to the door hard with

his right hand, only inches from Carranza's shoulder.² Martinez tries to push past Carranza through the door. Carranza continues to try to block Martinez from leaving, putting his right hand on Martinez's left arm. Martinez appears to be considerably stockier than Carranza.

In the meantime, a woman—presumably the manager—emerges from the back of the shop and stands behind the register and tip jar area. She appears to be speaking to Martinez. Martinez again approaches the counter. He appears to be arguing with the manager. Martinez goes back to the door and tries to go around Carranza. Martinez again is close to Carranza's face; the two are nearly face-to-face in the doorway. Martinez eventually gets through the doorway. Carranza returns to the counter area, looking at the inside of his left elbow, presumably at the puncture made by the sharp object Martinez had.

The People charged Martinez with second degree robbery. The People alleged Martinez had personally used a weapon—a knife—in the commission of the robbery.

Martinez testified on his own behalf at trial. Martinez said he suffers from diabetes, he had been living in his truck, and he was trying to drive his truck to his mother's house to get his medication. Martinez testified he was out of gas. He stopped at a gas station next to the coffee shop and asked a number of people for money. Then he went into the coffee shop and "told the guy [he] needed help."

Martinez testified he was trying to trade his cell phones for gas money. Martinez said he had his keys in his hand. Martinez testified Carranza told him to "get out" but Carranza was

² Martinez testified at trial that he struck the glass because he had a staph infection that was hurting his penis.

blocking the doorway at the same time. Martinez said he “went around [Carranza] without trying to touch him or anything.”

The jury convicted Martinez. It found the allegation that he used a knife to be not true. The trial court sentenced Martinez to five years in the state prison, suspended execution of that sentence, placed Martinez on probation, and ordered him to participate in a program designed for probationers who have mental health issues and are homeless.

DISCUSSION

Martinez contends there is no substantial evidence to demonstrate the required force “to prevent a retaking of the [victim’s] property or to facilitate [his] escape.” We do not agree.

In assessing the sufficiency of the evidence to support a conviction, we review the entire record to determine whether any reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60.) “The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) “An appellate court must view the evidence in the light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Reilly* (1970) 3 Cal.3d 421, 425.)

Robbery is “the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (Pen. Code, § 211.) Among other elements, the prosecution must prove the defendant used force or fear to take the property or to prevent the other person from resisting. (*Ibid.*; see CALCRIM No. 1600.) Essentially, “[r]obbery is larceny with the aggravating

circumstances that ‘the property is taken from the person or presence of another . . .’ and ‘is accomplished by the use of force or by putting the victim in fear of injury.’ (*People v. Gomez* (2008) 43 Cal.4th 249, 254, fn. 2.)” (*People v. Anderson* (2011) 51 Cal.4th 989, 994.)

In California, “‘[t]he crime of robbery is a continuing offense that begins from the time of the original taking until the robber reaches a place of relative safety.’” (*People v. Estes* (1983) 147 Cal.App.3d 23, 28.)” (*People v. Anderson, supra*, 51 Cal.4th at p. 994.) Thus, a defendant who does not use force or fear when he first takes the property may nonetheless be guilty of robbery if he uses force or fear to retain it or carry it away in the victim’s presence. (*People v. Gomez, supra*, 43 Cal.4th at pp. 256-257, 264; see also *Estes, supra*, 147 Cal.App.3d at p. 28 [“It is sufficient to support the conviction that appellant used force to prevent the [victim] from retaking the property and to facilitate his escape.”].)

Here, the parties agree Martinez did not use force³ when he took the cash from the two tip jars on the counter. However—having watched the video and read the trial testimony—we conclude there *is* substantial evidence Martinez used force to get past Carranza and leave the coffee shop with the money. Martinez tried twice to “barge through” Carranza and banged his hand on the glass door or window near Carranza’s shoulder. Carranza testified Martinez pushed him. The keys Martinez had in his hand poked Carranza, breaking the skin. This evidence was sufficient. (*People v. McKinnon* (2011) 52 Cal.4th 610, 687-688 [“defendant’s act of shoving [a] teacher out of his way in his

³ The district attorney conceded at trial that the case did not involve fear, only force. The prosecutor told the jury, “[T]his is not a fear case This is a case of force.”

effort to escape the cafeteria with the money box completed a robbery of the teacher”]; *People v. Pham* (1993) 15 Cal.App.4th 61, 68 “[i]t is enough that defendant forcibly prevented the victims from recovering their property”]; *People v. Garcia* (1996) 45 Cal.App.4th 1242, 1246 [defendant gave cashier “slight push” on her shoulder; this “touching was more than incidental” because defendant “intentionally pushed against [cashier] to move her out of the way so he could reach into the register”].) Nor does the fact that Carranza “bodied” Martinez back change the analysis. “It is the conduct of the perpetrator who resorts to violence to further his theft, and not the decision of the victim to confront the perpetrator, that should be analyzed in considering whether a robbery has occurred.” (*People v. Gomez, supra*, 43 Cal.4th at p. 264.)

Where, as here, the evidence supporting the force element is legally sufficient, it is the trier of fact—not this court—that must be convinced of the defendant’s guilt beyond a reasonable doubt. (*People v. Harris* (2013) 57 Cal.4th 804, 849-850; *People v. Friend* (2009) 47 Cal.4th 1, 40-41 [we resolve neither credibility issues nor evidentiary conflicts].)

DISPOSITION

We affirm Paul Martinez's conviction.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.